

INTERNET TAX FREEDOM ACT OF 1998

OCTOBER 10, 1998.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HYDE, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 3529]

[Including cost of estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3529) to establish a national policy against State and local interference with interstate commerce on the Internet or online services, and to excise congressional jurisdiction over interstate commerce by establishing a moratorium on the imposition of exactions that would interfere with the free flow of commerce via the Internet, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Internet Tax Freedom Act of 1998”.

SEC. 2. MORATORIUM ON CERTAIN TAXES.

(a) AMENDMENT.—Title 4 of the United States Code is amended by adding at the end the following:

“CHAPTER 6—MORATORIUM ON CERTAIN TAXES

“Sec.

“151. Moratorium.

“152. Advisory commission on electronic commerce.

“153. Legislative recommendations.

“154. Expedited consideration of legislative recommendations

“155. Definitions.

“§ 151. Moratorium

“(a) MORATORIUM.—For a period of 3 years following the date of the enactment of this chapter, neither any State, nor any political subdivision thereof, shall impose, assess, collect, or attempt to collect—

“(1) taxes on Internet access;

“(2) bit taxes; or

“(3) multiple or discriminatory taxes on electronic commerce.

“(b) EXCEPTION TO MORATORIUM.—(1) Subject to paragraph (2), the moratorium in subsection (a)(1) shall not apply to the following taxes (as applicable), as in effect on the date of the enactment of this chapter, on Internet access:

“(A) STATE OF CONNECTICUT.—Section 12–407(2)(i)(A) of the General Statutes of Connecticut.

“(B) STATE OF WISCONSIN.—Section 77.52(2)(a)5 of the Wisconsin Statutes (1995–96).

“(C) STATE OF IOWA.—Section 422.43(1) of the Code of Iowa (1997).

“(D) STATE OF NORTH DAKOTA.—North Dakota Century Code 57–39.2 and 57–34.

“(E) STATE OF SOUTH DAKOTA.—South Dakota Codified Law Annotated 10–45–5.

“(F) STATE OF NEW MEXICO.—New Mexico Statutes Annotated 7–9–3.

“(G) STATE OF TENNESSEE.—Tennessee Code Annotated 67–6–221, 67–6–102(23)(iii), and 67–6–702(g).

“(H) STATE OF OHIO.—Chapter 5739 of the Ohio Revised Code.

“(2)(A) Paragraph (1) shall apply with respect to a tax referred to in such paragraph only if the referenced State enacts, during the 1–year period beginning on the date of the enactment of this chapter, a law to expressly affirm that such tax is imposed on Internet access.

“(B) A State that satisfies the requirement specified in subparagraph (A) shall be deemed to have satisfied such requirement immediately after the enactment of this chapter, except that such State may not impute penalties or interest on any tax accrued during the period beginning on the date of the enactment of this Act and ending of the date such State satisfies such requirement.

“(c) APPLICATION OF MORATORIUM.—Subsection (a) shall not apply with respect to the provision of Internet access that is offered for sale as part of a package of services that includes services other than Internet access, unless the service provider separately states that portion of the billing that applies to such services on the user’s bill.

“§ 152. Advisory Commission on Electronic Commerce

“(a) ESTABLISHMENT OF COMMISSION.—There is established a temporary commission to be known as the Advisory Commission on Electronic Commerce (in this chapter referred to as the ‘Commission’). The Commission shall—

“(1) be composed of 31 members appointed in accordance with subsection (b), including the chairperson who shall be selected by the members of the Commission from among individuals specified in subsection (b); and

“(2) conduct its business in accordance with the provisions of this chapter.

“(b) MEMBERSHIP.—

“(1) IN GENERAL.—The Commissioners shall serve for the life of the Commission. The membership of the Commission shall be as follows:

“(A) Three representatives from the Federal Government comprised of the Attorney General, the Secretary of Commerce, and the Secretary of the Treasury, or their respective representatives.

“(B) Fourteen representatives from State, local, and county governments comprised of 2 representatives each from the National Governors’ Association, the National Conference of State Legislatures, the Council of State Governments, the National Association of Counties, the National League of Cities, and the United States Conferences of Mayors; and 1 representative each from the International City/County Managers Association and the American Legislative Exchange Council.

“(C) Fourteen representatives of taxpayers and business—

“(i) 7 of whom shall be appointed jointly by the Speaker of the House of Representatives and the majority leader of the Senate, of whom 3 shall be individuals employed by or affiliated with persons engaged in providing Internet access or communications or transactions that use the Internet, 3 shall be individuals employed by or affiliated with persons engaged in electronic commerce (including at least 1 who is employed by or affiliated with a person also engaged in mail order commerce), and 1 shall be an individual employed by or affiliated with a person engaged in software publishing; and

“(ii) 7 of whom shall be appointed jointly by the minority leader of the House of Representatives and the minority leader of the Senate, of whom 3 shall be individuals employed by or affiliated with persons engaged in providing Internet access or communications or transactions that use the Internet, 3 shall be individuals employed by or affiliated with persons engaged in electronic commerce (including at least 1 who is employed by or affiliated with a person also engaged in mail order commerce), and 1 shall be an individual employed by or affiliated with a person engaged in software publishing.

“(2) APPOINTMENTS.—Appointments to the Commission shall be made not later than 45 days after the date of enactment of this chapter. The chairperson shall be selected not later than 60 days after the date of the enactment of this chapter.

“(c) ACCEPTANCE OF GIFTS AND GRANTS.—The Commission may accept, use, and dispose of gifts or grants of services or property, both real and personal, for purposes of aiding or facilitating the work of the Commission. Gifts or grants not used at the expiration of the Commission shall be returned to the donor or grantor.

“(d) OTHER RESOURCES.—The Commission shall have reasonable access to materials, resources, data, and other information from the Department of Justice, the Department of Commerce, and the Department of the Treasury. The Commission shall also have reasonable access to use the facilities of the Department of Justice, the Department of Commerce, and the Department of the Treasury for purposes of conducting meetings.

“(e) SUNSET.—The existence of the Commission shall terminate—

“(1) when the last of the committees of jurisdiction referred to in section 154 concludes consideration of the legislation proposed under section 153; or

“(2) 3 years after the date of the enactment of this chapter;

whichever occurs first.

“(f) RULES OF THE COMMISSION.—

“(1) Sixteen members of the Commission shall constitute a quorum for conducting the business of the Commission.

“(2) Any meetings held by the Commission shall be duly noticed at least 14 days in advance and shall be open to the public.

“(3) The Commission may adopt other rules as needed.

“(g) DUTIES OF THE COMMISSION.—The duties of the Commission, to be carried out in consultation with the National Tax Association Communications and Electronic Commerce Tax Project, and other interested persons, may include—

“(1) conducting a thorough study of State and local taxation of transactions using the Internet and Internet access;

“(2) examining the collection and administration of consumption taxes on remote commerce in other countries and the United States, and the impact of such collection on the global economy;

“(3) examining the advantages and disadvantages of authorizing States and local governments to require remote sellers to collect and remit sales and use taxes;

“(4) proposing a uniform system of definitions of remote and electronic commerce that may be subject to sales and use tax within each State;

“(5) examining model State legislation relating to taxation of transactions using the Internet and Internet access, including uniform terminology, definitions of the transactions, services, and other activities that may be subject to State and local taxation, procedural structures and mechanisms applicable to

such taxation, and a mechanism for the resolution of disputes between States regarding matters involving multiple taxation;

“(6) examining a simplified system for administration and collection of sales and use tax for remote commerce, that incorporates all manner of making consumer payments, that would provide for a single statewide sales or use tax rate (which rate may be zero), and would establish a method of distributing to political subdivisions within each State their proportionate share of such taxes, including an examination of collection of sales or use tax by small volume remote sellers only in the State of origin;

“(7) examining ways to simplify the interstate administration of sales and use tax on remote commerce, including a review of the need for a single or uniform tax registration, single or uniform tax returns, simplified remittance requirements, and simplified administrative procedures;

“(8) examining the need for an independent third party collection system that would utilize the Internet to further simplify sales and use tax administration and collection;

“(9) reviewing the efforts of States to collect sales and use taxes owed on purchases from remote sellers, as well as review the appropriateness of increased activities by States to collect sales and use taxes directly from customers of remote sellers;

“(10) examining the level of contacts sufficient to permit a State to impose a sales or use tax on remote commerce that would subject a remote seller to collection obligations imposed by the State, including—

“(A) the definition of a level of contacts below which a State may not impose collection obligations on a remote seller;

“(B) whether or not such obligations are applied in a nondiscriminatory manner with respect to nonremote transactions; and

“(C) the impact of such obligation on small business remote sellers;

“(11) examining making permanent the temporary moratorium described in section 151 with respect to Internet access as well as such other taxes that the Commission deems appropriate;

“(12) examining ways to simplify State and local taxes imposed on the provision of telecommunications services;

“(13) requiring the Commission to hold a public hearing to provide an opportunity for representatives of the general public, taxpayer groups, consumer groups, State and local government officials, and tax-supported institutions to testify; and

“(14) examining other issues that the Commission determines to be relevant.

“(h) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act shall not apply with respect to the Commission.

“§ 153. Legislative recommendations

“(a) TRANSMISSION OF PROPOSED LEGISLATION.—Not later than 2 years after the date of the enactment of this chapter, the Commission shall transmit to the President and the Congress proposed legislation reflecting any findings concerning the matters described in such section.

“(b) CONTENTS OF PROPOSED LEGISLATION.—The proposed legislation submitted under subsection (a) by the Commission shall have been agreed to by at least 19 members of the Commission and may—

“(1) define with particularity the level of contacts between a State and remote seller that the Commission considers sufficient to permit a State to impose collection obligations on the remote seller and the level of contacts which is not sufficient to impose collection obligations on remote sellers;

“(2) provide that if, and only if, a State has adopted a single sales and use tax rate for remote commerce and established a method of distributing to its political subdivisions their proportionate share of such taxes, and adopted simplified procedures for the administration of its sales and use taxes, including uniform registration, tax returns, remittance requirements, and filing procedures, then such State should be authorized to impose on remote sellers a duty to collect sales or use tax on remote commerce;

“(3) provide that, effective upon the expiration of a 4-year period beginning on the date of the enactment of such legislation, a State that does not have in effect a single sales and use tax rate and simplified administrative procedures shall be deemed to have in effect a sales and use tax rate on remote commerce equal to zero, until such time as such State does adopt a single sales and use tax rate and simplified administrative procedures;

“(4) include uniform definitions of categories of property, goods, services, or information subject to, or exempt from, sales and use taxes;

“(5) make permanent the temporary moratorium described in section 151 with respect to Internet access, as well as such other taxes (including those described in section 151) that the Commission deems appropriate;

“(6) provide a mechanism for the resolution of disputes between States regarding matters involving multiple taxation; and

“(7) include other provisions that the Commission deems necessary.

“(c) RECOMMENDATIONS OF THE PRESIDENT.—Not later than 45 days after the receipt of the Commission’s legislative proposals, the President shall review such proposals and submit to the Congress such policy recommendations as the President deems necessary or expedient.

“§ 154. Expedited consideration of legislative recommendations

“(a) Not later than 90 legislative days after the transmission to the Congress by the Commission of the proposed legislation described in section 153, such legislation shall be considered by the respective committees of jurisdiction within the House of Representatives and the Senate, and, if reported, shall be referred to the proper calendar on the floor of each House for final action.

“(b) For purposes of this section, the 90-day period shall be computed by excluding—

“(1) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die; and

“(2) any Saturday and Sunday, not excluded under paragraph (1), when either House is not in session.

“§ 155. Definitions

“For the purposes of this chapter:

“(1) BIT TAX.—The term ‘bit tax’ means any tax on electronic commerce expressly imposed on or measured by the volume of digital information transmitted electronically, or the volume of digital information per unit of time transmitted electronically, but does not include taxes imposed on the provision of telecommunications services.

“(2) COMPUTER SERVER.—The term ‘computer server’ means a computer that functions as a centralized provider of information and services to multiple recipients.

“(3) DISCRIMINATORY TAX.—The term ‘discriminatory tax’ means—

“(A) any tax imposed by a State or political subdivision thereof on electronic commerce that—

“(i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;

“(ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period;

“(iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means; or

“(iv) establishes a classification of Internet access provider for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means; or

“(B) any tax imposed by a State or political subdivision thereof, if—

“(i) the mere use of a computer server by a remote seller to create or maintain a site on the Internet is considered a factor in determining a remote seller’s tax collection obligation; or

“(ii) the display of a remote seller’s information or content on the computer server of a provider of Internet access, or the processing of orders through the computer server of a provider of Internet access, is considered a factor in determining whether the provider of Internet access is deemed to be the agent of the remote seller for tax collection purposes.

“(4) ELECTRONIC COMMERCE.—The term ‘electronic commerce’ means any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or informa-

tion, whether or not for consideration, and includes the provision of Internet access.

“(5) INFORMATION SERVICES.—The term ‘information services’ has the meaning given such term in section 3(20) of the Communications Act of 1934 as amended from time to time.

“(6) INTERNET.—The term ‘Internet’ means the combination of computer facilities and electromagnetic transmission media, and related equipment and software, comprising the interconnected worldwide network of computer networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocol, to transmit information.

“(7) INTERNET ACCESS.—The term ‘Internet access’ means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. Such term does not include telecommunications services.

“(8) MULTIPLE TAX.—The term ‘multiple tax’ means—

“(A) any tax that is imposed by one State or political subdivision thereof on the same or essentially the same electronic commerce that is also subject to another tax imposed by another State or political subdivision thereof (whether or not at the same rate or on the same basis), without a credit (for example, a resale exemption certificate) for taxes paid in other jurisdictions (The term ‘multiple tax’ shall not include a sales or use tax imposed by a State and 1 or more political subdivisions thereof pursuant to a law referred to in section 151(b)(1) on the same electronic commerce or a tax on persons engaged in electronic commerce which also may have been subject to a sales or use tax thereon. For purposes of this subparagraph, the term ‘sales or use tax’ means a tax that is imposed on or incident to the sale, purchase, storage, consumption, distribution, or other use of tangible personal property or services as may be defined by laws imposing such tax and which is measured by the amount of the sales price or other charge for such property or service); or

“(B) any tax on Internet access if the State or political subdivision thereof classifies such Internet access as telecommunications or communications services under State law and such State or political subdivision thereof has also imposed a tax on the purchase or use of the underlying telecommunications services that are used to provide such Internet access without allowing a credit for other taxes paid, a sale for resale exemption, or other mechanism for eliminating duplicate taxation.

“(9) REMOTE COMMERCE.—The term ‘remote commerce’ means the sale, lease, license, offer, or delivery of property, goods, services, or information by a seller in 1 State to a purchaser in another State.

“(10) REMOTE SELLER.—The term ‘remote seller’ means a person who sells, leases, licenses, offers, or delivers property, goods, services, or information from one State to a purchaser in another State.

“(11) STATE.—The term ‘State’ means any of the several States, the District of Columbia, or any territory or possession of the United States.

“(12) TAX.—The term ‘tax’ means any obligation to pay or to collect and remit any levy, fee, or charge imposed by any governmental entity solely for the purpose of generating revenues for governmental purposes and not—

“(A) in return for a specific privilege, service, or benefit conferred on a person or entity;

“(B) to support public regulatory commissions; or

“(C) to support special purpose telecommunications service programs.

Such term does not include any franchise fees or similar fees imposed by a State or local franchising authority, referred to in section 622 or 653 of the Communications Act of 1934, as amended from time to time.

“(13) TELECOMMUNICATIONS SERVICES.—The term ‘telecommunications services’ has the meaning given such term in section 3(46) of the Communications Act of 1934, as amended from time to time.”

(b) CONFORMING AMENDMENT.—Title 4 of the United States Code is amended in the table of chapters by adding at the end the following:

“6. Moratorium on Certain Taxes 151”.

SEC. 3. NO EXPANSION OF TAX AUTHORITY.

Nothing in this Act shall be construed to expand the duty of any person to collect or pay taxes beyond that which existed immediately before the date of the enactment of this Act.

PURPOSE AND SUMMARY

H.R. 3529 establishes a three-year moratorium on certain state taxes applied with respect to the Internet.¹ This is necessary to avoid stifling the potential for an innovative form of technology to provide information, goods, and services quickly and cheaply throughout the world. In addition, recognizing the concern that the current subfederal tax system was developed in a time and for a form of commerce that could make it inappropriate for its application to the technology employed by the Internet,² the bill establishes an Advisory Commission on Electronic Commerce to examine numerous relevant issues and make recommendations to Congress.

BACKGROUND AND NEED FOR THE LEGISLATION

Article I, Section 8, Clause 3 of the United States Constitution authorizes Congress to “regulate Commerce with foreign Nations, and among the several States.” Known as the “Commerce Clause,” it prohibits “by its own force” certain state actions that interfere with interstate commerce³ and has had the effect of placing the Congress in a superior position with respect to the states. Over the years, the Supreme Court’s analysis of which state taxes interfere with interstate commerce and which are permissible has evolved, at first prohibiting taxation of interstate commerce “in any form,”⁴ then distinguishing between “direct” and “indirect” burdens on interstate commerce.⁵ After the latter analysis was rejected in *Western Live Stock v. Bureau of Revenue*,⁶ the Court began to focus instead on whether a tax subjected interstate commerce to a risk of multiple taxation, before reverting to the direct-indirect test in *Freeman v. Hewit*.⁷ That approach was renounced by the Court in *Complete Auto Transit, Inc. v. Brady*,⁸ because it was seen as attaching “constitutional significance to a semantic difference,” notably how the tax was denominated rather than what its effect was. Between *Freeman* and *Complete Auto*, (in the middle of what Justice Stevens described in *Quill Corp. v. North Dakota*,⁹ as “this latest rally between formalism and pragmatism”), the Court decided in *National Bellas Hess, Inc. v. Department of Revenue of the State*

¹The Internet is a global matrix of interconnected computer networks communicating through the Transmission Control Protocol/Internet Protocol, which specifies how data is subdivided in packets and assigned to different address to be transferred over the Internet. See Interagency Working Group on Electronic Commerce, Framework for Global Electronic Commerce 1 n. (1997) where the term is used to encompass “all such data networks” despite the fact that some of these commerce activities occur on proprietary or other networks that are not “technically part of the Internet.”

²See Walter Hellerstein, *The Taxation of Electronic Commerce: Preliminary Thoughts on Model Uniform Legislation*, State Tax Notes, 1315, 1316 (April 28, 1997). (“There is widespread recognition that traditional nexus criteria are ill-suited to the creation of sensible and administrable rules for determining the taxability of taxpayers or transactions in interstate commerce. Traditional tax jurisdiction or ‘nexus’ principles, after all, are rooted in concepts of territoriality and physical presence in the states.”)

³The phrasing of Justice Stone in *South Carolina State Highway Dept. v. Barnell Brothers Inc.*, 303 U.S. 1777, 185 (1938).

⁴*Leloup v. Port of Mobile*, 127 U.S. 640, 648 (1888).

⁵*Sanford v. Poe*, 69 F. 546 (5th 1895), *aff’d sub nom. Adams Express Co. v. Ohio State Auditor*, 165 U.S. 194, 220 (1897).

⁶303 U.S. 350, 256–258 (1938).

⁷329 U.S. 249, 256 (1946).

⁸430 U.S. 274, 285 (1977).

⁹504 U.S. 298, 310 (1992).

of *Illinois*,¹⁰ that the Commerce Clause prohibits a state from imposing the duty of use tax collection and payment upon a seller whose only connection with customers in the state is by common carrier or by mail.

In *Quill*, the Court reaffirmed the validity of *Bellas Hess* in another case involving mail-order sales, extolling that case's value as a "clear rule." Despite recognizing a certain artificiality, the Court noted that the rule at least "firmly establishes the boundaries of legitimate state authority * * * and reduces litigation concerning these taxes."¹¹ In addition, the Court emphasized that such a "bright-line" rule with respect to sales and use taxes encouraged "settled expectations" that fostered "investment by businesses and individuals," noting that "it is not unlikely that the mail-order industry's growth over the last quarter century is due in part to the bright-line exemption from state taxation created in *Bellas Hess*."¹²

The development and rise of telecommunications and electronic commerce brings with it a considerably elevated level of complexity with respect to the effect on interstate commerce of taxation by states. As noted by Professor Hellerstein, issues peculiar to the taxation of electronic commerce include:

- the potential for competitive inequalities in taxation of the sales of tangible personal property and non-taxation of sales of services or intangibles;
- the question of just what constitutes a taxable transaction under state laws
- where the sale of services in electronic commerce takes place.¹³

The potential exists for the Internet and interactive computer service to effect a wide variety of commercial sales and activities, including: computer software, video on demand, cable television, music albums, books, newspapers, magazines, information databases, education and job training, banking, electronic bill payment, stock-trading, and direct marketing. But as the Internet realizes its commercial potential, inevitably state taxation is there to meet it. Approximately forty states impose a sales tax on the transmission component of electronic commerce. Some one-half of the states impose a sales tax on specific categories of online content, such as electronic transmission of canned software or cable television. About a quarter of the states impose a broader based sales tax on numerous categories of online content such as electronic information or computer services. Generally, this taxation was not specifically designed for electronic commerce, but rather attached as the result of a hodgepodge of existing laws intended to reach other types of activities including sales, telecommunications, cable television, information services, and data processing.

¹⁰ 386 U.S. 753 (1967).

¹¹ Writing for the Court, Justice Stevens noted, "This benefit is important, for as we have so frequently noted, our law in this area is something of a 'quagmire' and the 'application of constitutional principles to specific state statutes leaves much room for controversy and confusion and little in the way of precise guides to the States in the exercise of their indispensable power of taxation' *Northwestern State Cement Co. v. Minnesota*, 358 (U.S. 450, 457-458 (1969))." *Quill*, 504 U.S. at 316-317.

¹² 504 U.S. at 316.

¹³ Walter Hellerstein, *Telecommunications and Electronic Commerce: Overview and Appraisal*, State Tax Notes 519 at 523 (1997).

The tension between this emergent technology and the existing subfederal tax structure raises a dual concern. On the one hand, technology may render state taxation obsolete or unadministrable. On the other hand, the latter may prevent the former from realizing its potential. Causing states concern generally, as they confront this new technology, is an evaporating tax base in a time of increased local responsibility. Because, under current constitutional doctrine, states cannot require remote vendors to collect use tax on the sale of goods and services over the Internet to local customers, the growth of the Internet may be viewed by some with apprehension as the situs of sales drifts inexorably into cyberspace.

The Committee feels that this is the appropriate time, before state taxation and the Internet become confounded, to pause and examine the welter of issues raised by electronic commerce and to create a coordinated and rational subfederal tax structure that will encourage the kind of “settled expectations” that the Supreme Court found useful in *Quill*. For this proposition, the Committee finds support in the Clinton Administration’s *Framework for Global Electronic Commerce*.¹⁴ That document notes the Administration’s concern “about possible moves by state and local tax authorities to target electronic commerce and Internet access”¹⁵ and goes on to warn that “uncertainties associated with such taxes and the inconsistencies among them could stifle the development of Internet commerce.”¹⁶ The document recommends that “[b]efore any further action is taken, states and local governments should cooperate to develop a uniform, simple approach to the taxation of electronic commerce, based on existing principles of taxation where feasible.”¹⁷

HEARING

The Committee’s Subcommittee on Commercial and Administrative Law held a hearing on a related bill, H.R. 1054, the “Internet Tax Freedom Act,” on Thursday, July 17, 1997. Testimony was received from the following 10 witnesses: Stanley R. Arnold, Commissioner of the New Hampshire Department of Revenue Administration, and President of the Federation of Tax Administrators; the Honorable Christopher Cox, a Representative in Congress from the State of California; Howard P. Foley, President of the Massachusetts High Technology Council; Professor Walter Hellerstein of the University of Georgia School of Law; Robert Holleyman, President of the Business Software Alliance; Kendall L. Houghton, General Counsel of the Committee on State Taxation; Andrea L. Ireland, Associate General Counsel of Netscape Communications Corporation; Brian O’Neill, Council Member of the City of Philadelphia, Pennsylvania and First Vice President of the National League of Cities; Jack Valenti, President and CEO of the Motion Picture Association of America; and the Honorable Ron Wyden, a Senator in Congress from the State of Oregon.

¹⁴ See Interagency Working Group on Electronic Commerce, *supra* note 1.

¹⁵ *Id.* at 8.

¹⁶ *Id.*

¹⁷ *Id.*

COMMITTEE CONSIDERATION

On June 17, 1998, the Committee met in open session and ordered reported the bill, H.R. 3529, with an amendment in the nature of a substitute, by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

There was one amendment offered during full Committee consideration of H.R. 3529. Mr. Goodlatte offered an amendment, which was adopted by voice vote, to remove the District of Columbia and the home-rule cities of Colorado from the section of the bill providing exceptions to the moratorium on Internet access taxes.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3529, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 23, 1998.

Hon. HENRY J. HYDE,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate and mandates statement for H.R. 3529, the Internet Tax Freedom Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley (for federal costs) and Pepper Santalucia (for the state and local impact).

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosures.

H.R. 3529—Internet Tax Freedom Act of 1998

Summary: H.R. 3529 would impose a three-year moratorium on certain state and local taxation of online services and electronic commerce. In addition, the bill would establish an Advisory Commission on Electronic Commerce to examine issues related to the taxation of electronic commerce. CBO estimates that enacting H.R. 3529 would result in new discretionary spending of \$1 million to \$2 million over the 1999–2003 period, assuming appropriation of the necessary amounts. H.R. 3529 could affect direct spending and receipts, so pay-as-you-go procedures would apply, but CBO estimates that any such effects would be negligible. This bill would impose no new private-sector mandates as defined by the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: H.R. 3529 would establish an Advisory Commission on Electronic Commerce to examine issues related to the taxation of electronic commerce. The commission would exist for up to three years and would consist of representatives of federal, state, and local governments, citizens, and business interests. The bill would authorize the commission to have reasonable access to information, resources, and space to conduct meetings from the Departments of Commerce, Justice, and the Treasury. CBO estimates the commission's expenses for the next three fiscal years would be less than \$500,000 annually because no staff or contractual support would be authorized by the bill. CBO expects that nonfederal participants would bear a significant portion of the costs of the commission. The costs of this legislation fall within budget function 370 (commerce and housing credit).

Pay-as-you-go-considerations: H.R. 3849 would authorize the commission to accept and use gifts and donations to assist in its work. Donations of money are recorded in the budget as governmental receipts (revenues) and the use of any such amounts under the bill would be direct spending. Because the bill could affect receipts and direct spending, pay-as-you-go procedures would apply. CBO expects that any such effects would be negligible.

Estimated impact on State, local, and tribal governments: See separate CBO mandates statement.

Estimated impact on the private sector: This bill would impose no new private-sector mandates as defined by UMRA.

Previous CBO estimates: CBO has completed cost estimates for three other versions of the Internet Tax Freedom Act. On June 19, 1998, CBO transmitted an estimate of H.R. 3849, as reported by the House Committee on the Judiciary on June 19, 1998. On May 22, 1998, CBO transmitted an estimate of the federal costs of H.R. 3849, as ordered reported by the House Committee on Commerce on May 14, 1998. And on January 21, 1998, CBO transmitted an estimate of the federal costs of S. 442, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on November 4, 1997.

Differences between those estimates and the estimate H.R. 3529 reflect differences in the bills. The Commerce Committee's version of H.R. 3849 would require the Department of Commerce to study barriers to electronic commerce in foreign markets and establish an

Advisory Commission on Electronic Commerce, but with fewer responsibilities than under H.R. 3529. The Judiciary Committee's version of H.R. 3849 also would require the Department of Commerce to study barriers to electronic commerce in foreign markets, but would not establish an advisory commission.

Estimate prepared by: Mark Hadley.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

CONGRESSIONAL BUDGET OFFICE MANDATES STATEMENT

H.R. 3529—Internet Tax Freedom Act of 1998

Summary: H.R. 3529 contains no private-sector mandates, but by imposing a moratorium on certain types of state and local taxes, the bill would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act of 1995 (UMRA). For reasons described below, CBO cannot estimate whether the direct costs of this mandate would exceed the statutory threshold established in UMRA (\$50 million in 1996, indexed annually for inflation).

Intergovernmental Mandates Contained in the Bill: H.R. 3529 would impose a three-year moratorium on certain state and local taxes, including taxes on Internet access and online services. This moratorium would constitute an intergovernmental mandate as defined in UMRA. The bill would allow eight states that have already imposed a tax on these services to reinstate their taxes but only if they enact, within a year's time, a new law expressly imposing the taxes.

Estimated Direct Costs of Mandates to State, Local, and Tribal Governments

Is the Statutory Threshold Exceeded?

Because it is unclear what should be counted as the direct costs of the mandate, CBO cannot determine whether the threshold for intergovernmental mandates would be exceeded in any of the three years of the moratorium.

Total Direct Costs of Mandates

Twelve states, including the District of Columbia, have sought to impose their sales and use taxes on Internet access and online services. (These twelve include Illinois, which taxes these services in only very limited circumstances.) Twelve home-rule cities in Colorado also impose such taxes. H.R. 3529 would exempt from the moratorium the taxes of eight of these states if they enact, within a year's time, a new law expressly imposing the taxes. Any of the grandfathered states that enact the necessary law could collect taxes covering the entire three-year period, including taxes accrued between the date of enactment of this bill and the date it enacted its law. Illinois, South Carolina, Texas, the District of Columbia, and the twelve Colorado cities would not be covered by the grandfather clause and would therefore be temporarily prohibited from imposing their taxes.

UMRA defines the direct costs of an intergovernmental mandate as "the aggregate estimated amounts that all state, local, and tribal governments * * * would be prohibited from raising in revenues

in order to comply with the federal intergovernmental mandate.” Because of ambiguities in UMRA, CBO is unsure how to measure the direct costs of the mandate in this bill. First of all, it is unclear whether giving certain states the opportunity to opt out of the moratorium effectively eliminates some of the cost of the mandate. Second, it is unclear whether taxes assessed but not collected should be counted toward the direct costs of the mandate.

The direct costs of the mandate could be limited to the forgone revenues from the states and cities not grandfathered plus the administrative costs to enact new laws in the eight states grandfathered by the bill. However, any of the eight grandfathered states that failed to enact the necessary law within a year would incur additional costs because they would be precluded from imposing their taxes on these services for all three years. CBO is unsure whether those potential forgone revenues of the grandfathered states should also be included in the direct costs of the mandate, because we are uncertain now to measure the costs of a mandate that states can avoid by enacting a law. On the one hand, it could be argued that the eight states would be able to choose whether or not to abide by the moratorium—and that the fiscal consequences of that choice would be the responsibility of the states, not of the Federal government. On the other hand, in the absence of this bill, a state’s failure to act would have no fiscal consequences. But under this bill, a state’s failure to act would result in a restriction of its sovereign power to tax. It would be argued, therefore, that any loss of revenue should count as the costs of a mandate under UMRA.

In addition, CBO cannot make a threshold determination because we are unsure whether the direct costs of the tax moratorium should be only actual collections forgone or whether tax liabilities that are being litigated should also be included. Information from states and industry sources indicates that while total collections and unpaid assessments for all twelve states in 1997 were close to \$50 million, actual collections alone were significantly lower than that amount. The difference occurs because, in some of the states, companies are challenging the applicability of the tax to the service they provide or the state’s finding that they are obliged to collect the tax on the state’s behalf. In those cases, the companies are not collecting the tax, but they are accruing a potential tax liability to the states. CBO is unsure whether a tax that is being assessed but is not being paid should be counted toward the direct costs of a mandate when the applicability or constitutionality of the tax is being litigated.

The potential mandate cost would grow over the three years that the moratorium would be in effect, because of the projected growth of the market for Internet access and online services. Some industry analysts have predicted that the market will more than double in the next three years. Growth of this magnitude would push the twelve states’ collections plus potential tax liability over \$50 million, but whether actual collections would reach that threshold would depend on the outcome of litigation. If the states prevail in court, the mandate cost, if all twelve states were counted, would exceed the threshold. It is even possible that if the states prevail in court, the mandate cost for the cities and the four states not

grandfathered would exceed the threshold. Because of Texas's large population and relatively high sales tax rate, we estimate that it alone generates half of the tax revenues collected by the twelve states.

It is possible that, in the absence of this legislation, some state and local governments would enact new taxes or decide to apply existing taxes to Internet access or online services during the next three years. It is also possible that some governments would repeal existing taxes or preclude their application to these services. Such changes would affect the ultimate cost of the mandate but are extremely difficult to predict. Therefore, for the purposes of estimating the direct costs of the mandate in this bill, CBO considered only the revenues from taxes that are currently in place.

The moratorium in H.R. 3529 would also apply to "bit taxes," which are taxes based in some way on the volume of digital information being transmitted. According to both state officials and industry representatives, no state or locality has adopted this type of tax. In addition, the moratorium would apply to "multiple or discriminatory taxes on electronic commerce." CBO could not identify any current state or local taxes that would clearly meet the definitions provided in the bill for these two types of taxes.

Appropriation or other Federal financial assistance provided in bill to cover mandate cost: None.

Other impacts on State, local, and tribal governments: H.R. 3529 would establish a process that could lead to a fundamental reform of state and local sales and use taxes as they apply to interstate commerce. The bill would establish an Advisory Commission on Electronic Commerce made up of federal officials, representatives of state and local governments, and representatives of taxpayers and businesses. The commission's duties would include writing proposed legislation, which could give states expanded authority to require the collection of sales and use taxes on certain interstate sales if they simplify their tax codes. The proposed legislation could also provide that, after four years, states that had not yet simplified their tax code would lose any authority to tax certain interstate sales until they did so. This legislation would be submitted to the President, who would then have the choice of submitting some or all of it to the Congress. Any proposals submitted to the Congress would receive expedited consideration.

Previous CBO estimates: CBO has completed intergovernmental mandates statements for five other versions of the Internet Tax Freedom Act. The first four versions reviewed would impose a moratorium on some categories of state and local taxes. In each case, we determined that the moratorium would constitute an intergovernmental mandate as defined in UMRA. The direct costs that we estimated for the mandate in each bill differed depending on the scope and duration of the moratorium. For two versions, we determined that the costs of complying with the mandate would exceed the threshold established in UMRA. For the remaining two versions, we could not determine whether the threshold was exceeded. The version reported by the House Judiciary Committee on June 19, 1998, contained an intergovernmental mandate but did not include a moratorium on state and local taxes.

Date	Bill number	Version	Threshold determination
June 18, 1997	S. 442	As introduced	Threshold exceeded.
January 21, 1998	S. 442	As ordered reported by full committee	Cannot determine.
March 25, 1998	H.R. 1054	As approved by subcommittee	Threshold exceeded.
May 22, 1998	H.R. 3849	As ordered reported by House Commerce Committee.	Cannot determine.
June 19, 1998	H.R. 3849	As reported by House Judiciary Committee	Below threshold.

Estimate prepared by: Pepper Santalucia.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 8, clause 3 of the Constitution.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that the bill may be cited as the “Internet Tax Freedom Act of 1998.”

Section 2. Moratorium on certain taxes

Section 2(a) amends title 4, United States Code, by adding a new Chapter 6 (Sections 151–155) dealing with a moratorium on certain state taxes.

Section 151. Moratorium

Subsection (a) provides for a three-year moratorium from the date of enactment during which states (including political subdivisions thereof) would be prohibited from imposing, assessing, collecting or attempting to collect taxes on Internet access; bit taxes; or multiple or discriminatory taxes on electronic commerce.

Subsection (b) (1) of Section 151 of title 4, United States Code, as amended by H.R. 3529, provides that the moratorium that applies to taxes on Internet access does not include certain taxes specifically iterated in Subparagraphs (A) through (H). The taxes enumerated in these subparagraphs are those which states have identified as currently being assessed upon Internet access.

Subsection (b) (2) provides in subparagraph (A) that a state may continue to impose a tax enumerated in Subsection (b) (1) only if it enacts during a one-year period after the date of enactment a law to expressly reaffirm that such tax is imposed on Internet access. Subparagraph (B) provides that a state or city satisfying the requirement specified in subparagraph (A) shall be deemed to have satisfied such requirement immediately after the date of enactment of this chapter.

Subsection (c) provides that subsection (a) does not apply with respect to the provision of Internet access that is offered for sale as part of a package of services that includes services other than Internet access, unless the service provider separately states that portion of the billing that applies to such services on the user’s bill.

Section 152. Advisory Commission on Electronic Commerce

Subsection (a) establishes a temporary commission known as the Advisory Commission on Electronic Commerce composed of 31 members appointed in accordance with subsection (b). A chairperson is to be selected by the members of the Commission from among individuals specified in that subsection. The Commission is to conduct its business in accordance with the provisions of this chapter.

Subsection (b) provides in subparagraph (1) that the members of the Commission shall serve for the life of the Commission and shall be selected as follows: the Attorney General, the Secretary of Commerce and the Secretary of the Treasury of the United States, or their representatives; fourteen representatives from state, local, and county governments, comprised of two representatives each from the National Governors' Association, the National Conference of State Legislatures, the Council of State Governments, the National Association of Counties, the National League of Cities, and the United States Conference of Mayors; and one representative each from the International City/County Managers Association and the American Legislative Exchange Council; fourteen representatives of taxpayers and business, comprised of seven persons appointed jointly by the Speaker of the House of Representatives and the majority leader of the Senate, of whom three shall be employed by or affiliated with persons engaged in providing Internet access or communications, or transactions that use the Internet, three shall be employed by or affiliated with persons engaged in electronic commerce (including at least one employed by or affiliated with a person also engaged in mail order commerce), and one shall be an individual employed by or affiliated with a person engaged in software publishing; and seven persons appointed jointly by the minority leader of the House of Representatives and the minority leader of the Senate, of whom three shall be employed by or affiliated with persons engaged in providing Internet access or communications or transactions that use the Internet, three shall be individuals employed by or affiliated with persons engaged in electronic commerce (including at least one person employed by or affiliated with a person also engaged in mail order commerce) and one individual employed by or affiliated with a person engaged in software publishing.

Subparagraph (b)(2) provides that appointments to the Commission shall be made not later than 45 days after the date of enactment of the chapter. The chairperson is to be selected not later than 60 days after the date of enactment of the chapter.

Subsection (c) provides that the Commission may accept, use, and dispose of gifts or grants of services or property, both real and personal, provided to aid and facilitate the work of the Commission. Gifts or grants not used at the Commission's expiration shall be returned.

Subsection (d) provides that the Commission shall have reasonable access to materials, resources, data, and other information from the Departments of Justice, Commerce, and the Treasury and shall also have reasonable access to the facilities of these departments for the purpose of conducting meetings.

Subsection (e) provides that the Commission shall terminate when the last of the committees of jurisdiction of the Congress referred to in section 154 of title 4, United States Code as amended by H.R. 3529 shall conclude consideration of the legislation proposed under section 153; or three years after the date of enactment, whichever occurs first.

Subsection (f) provides that: sixteen members of the Commission shall constitute a quorum for conducting business; meetings must be noticed at least fourteen days in advance and shall be open to the public; and that Commission may adopt other rules as needed.

Subsection (g) provides that the duties of the Commission are to be carried out in consultation with the National Tax Association Communications and Electronic Commerce Tax Project (as well as other interested parties) and may include: (1) conducting a thorough study of state and local taxation of transactions using the Internet and Internet access; (2) examining the collection and administration of consumption taxes on remote commerce in other countries and the United States, and the impact of such collection on the global economy; (3) examining the advantages and disadvantages of authorizing states and local governments to require remote sellers to collect and remit sales and use taxes; (4) proposing a uniform system of definitions of remote and electronic commerce that may be subject to sales and use tax within each state; (5) examining model state legislation relating to taxation of transactions using the Internet and Internet access, including uniform terminology, definitions of the transactions, services, and other activities that may be subject to state and local taxation, procedural structures and mechanisms applicable to such taxation, and a mechanism for the resolution of disputes between states regarding matters involving multiple taxation; (6) examining a simplified system for administration and collection of sales and use taxes for remote commerce, that incorporates all manner of making consumer payments, that would provide for a single statewide sales or use tax rate (which rate may be zero) and would establish a method of distributing to political subdivisions within each state their proportionate share of such taxes, including examination of collection of sales or use taxes by small volume remote sellers only in the state of origin; (7) examining ways to simplify the interstate administration of sales and use taxes on remote commerce, including a review of the need for a single or uniform tax registration, single or uniform tax returns, simplified remittance requirements, and simplified administrative procedures; (8) examining the need for an independent third party collection system that would utilize the Internet to further simplify sales and use tax administration and collection; (9) reviewing the efforts of states to collect sales and use taxes owed on purchases from remote sellers, as well as reviewing the appropriateness of increased activities by states to collect sales and use taxes directly from customers of remote sellers; (10) examining the level of contacts sufficient to permit a state to impose a sales or use tax on remote commerce that would subject a remote seller to collection obligations imposed by the state, including—(A) the definition of a level of contacts below which a state may not impose collection obligations on a remote seller, (B) whether such obligations are applied in a nondiscriminatory manner with respect

to nonremote transactions, and (C) the impact of such obligations on small business sellers; (11) examining making permanent the temporary moratorium provided for in section 151 with respect to Internet access as well as such other taxes that the Commission deems appropriate; (12) examining ways to simplify state and local taxes imposed on the provision of telecommunications services; (13) requiring the Commission to hold a public hearing to provide an opportunity for representatives of the general public, taxpayer and consumer groups, State and local government officials, and tax-supported institutions to testify; and (14) examining other issues that the Commission determines to be relevant.

Section (h) provides that the Federal Advisory Committee Act shall not apply to the Commission.

Section 153. Legislative recommendations

Subsection (a) provides that not later than two years after the date of enactment that the Commission shall transmit to the President and the Congress proposed legislation that reflects its findings.

Section (b) provides that the contents of the proposed legislation shall have been agreed to by at least 19 members of the Commission and may: (1) define with particularity the level of contacts between state and remote seller that the Commission considers sufficient to permit a state to impose collection obligations on the remote seller and the level of contacts which is not sufficient to impose collection obligations on remote sellers; (2) provide that if and only if a state has adopted a single sales and use tax rate for remote commerce and established a method of distributing to its political subdivisions their proportionate share of such taxes, and adopted simplified procedures for the administration of its sales and use taxes, including uniform registration, tax returns, remittance requirements, and filing procedures, then such state should be authorized to impose on remote sellers a duty to collect sales or use tax on remote commerce; (3) provide that, effective upon the expiration of a four-year period beginning on the date of enactment, a state that does not have in effect a single sales and use tax rate and simplified administrative procedures shall be deemed to have in effect a sales and use tax rate on remote commerce equal to zero, until such time as such state does adopt a single sales and use tax rate and simplified administrative procedures; (4) include uniform definitions of categories of property, goods, services, or information subject to, or exempt from, sales and use taxes; (5) make permanent the temporary moratorium described in section 151 with respect to Internet access, as well as such other taxes (including those described in section 151) that the Commission deems appropriate; (6) provide a mechanism for the resolution of disputes between states regarding matters involving multiple taxation; and (7) include such other provisions that the Commission considers necessary.

Subsection (c) provides that no later than 45 days after the receipt of the Commission's legislative proposals, the President shall review such proposals and submit to the Congress such policy recommendations as the President deems necessary or expedient.

Section 154. Expedited consideration of legislative recommendations

Subsection (a) provides that no later than 90 legislative days after the transmission to the Congress by the Commission of its proposed legislation, it shall be considered by the respective Congressional committees of jurisdiction and, if reported, shall be referred to the proper calendar on the floor of each body for final action.

Subsection (b) provides that the 90 day period shall be computed by excluding: (1) days on which either House is not session because of an adjournment of more than three days to a day certain or an adjournment of the Congress sine die; and (2) Saturdays or Sundays, not excluded under paragraph (1), when either House is not in session.

Section 155. Definitions

This section contains definitions for purposes of this chapter, including:

(1) bit tax—which means any tax on electronic commerce expressly imposed on or measured by the volume of digital information transmitted electronically, or the volume of digital information per unit of time transmitted electronically, but does not include taxes imposed on the provision of telecommunications services;

(2) computer server—which means a computer that functions as a centralized provider of information and services to multiple recipients;

(3) discriminatory tax—which means; (A) any tax imposed by a state or political subdivision thereof on electronic commerce—(i) is not generally imposed and legally collectible by such state or political subdivision thereof on transactions involving similar property, goods, services, or information accomplished through other means; (ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a five-year period; (iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means; or (iv) establishes a classification of Internet access provider for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means; or (B) any tax imposed by a State or political subdivision thereof, if—(i) the mere use of a computer server by a remote seller to create or maintain a site on the Internet is considered a factor in determining a remote seller's tax collection obligation; or (ii) the display of a remote seller's information or content on the computer server of a provider of Internet access, or the processing of orders through the computer server of a provider of Internet access, is considered a factor in determining whether the provider of Internet access is deemed to be the agent of the remote seller for tax collection purposes.

(4) electronic commerce—which means any transaction conducted on the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information, whether or not for consideration, and includes the provision of Internet access.

(5) information services—which has the meaning given such term in section 3(20) of the Communications Act of 1934, as amended.

(6) Internet—which means the combination of computer facilities and electromagnetic transmission media, and related equipment and software, comprising the interconnected worldwide network of computer networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocol, to transmit information.

(7) Internet access—which means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and that may also include access to proprietary content, information, and other services as part of a package of services offered to a consumer. This term does not include telecommunications services.

(8) multiple tax—which means: (A) any tax that is imposed by one state or political subdivision thereof on the same or essentially the same electronic commerce that is also subject to another tax imposed by another state or political subdivision thereof (whether or not at the same rate or on the same basis), without a credit (for example, a resale exemption certificate) for taxes paid in other jurisdictions. The term does not include a sales or use tax imposed by a state and one or more political subdivisions thereof pursuant to a law referred to in section 151(b)(1) on the same electronic commerce or a tax on persons engaged in electronic commerce which also may have been subject to a sales or use tax thereon. For purposes of this definition, “sales or use tax” means a tax that is imposed on or incident to the sale, purchase, storage, consumption, distribution, or other use of tangible personal property or services as may be defined by laws imposing such tax and which is measured by the amount of the sales price or other charge for such property or service; or (B) any tax on Internet access if the state or political subdivision thereof classifies such Internet access as telecommunications or communications services under state law and such state or political subdivision thereof has also imposed a tax on the purchase or use of the underlying telecommunications services that are used to provide such Internet access without allowing a credit for other taxes paid, a sale for resale exemption, or other mechanism for eliminating duplicate taxation.

(9) remote commerce—which means the sale, lease, license, offer, or delivery of property, goods, services, or information by a seller in one state to a purchaser in another state.

(10) remote seller—which means a person who sells, leases, licenses, offer, or delivers property, goods, services, or information from one state to a purchaser in another state.

(11) State—which means any of the several states, the District of Columbia, or any territory or possession of the United States.

(12) tax—which means any obligation to pay or to collect and remit any levy, fee, or charge imposed by any governmental entity solely for the purpose of generating revenues for governmental purposes and not: (A) in return for a specific privilege, service, or benefit conferred on a person or entity; (B) to support public regulatory commissions; or (C) to support special purpose telecommunications service programs. “Tax” does not include any franchise fees or similar fees imposed by a state or local franchising authority, referred to in section 622 or 653 or the Communications Act of 1934, as amended.

(13) telecommunications services—which has the meaning given such term in section 3(46) of the Communications Act of 1934, as amended.

Subsection 2(b) of H.R. 3529 contains a conforming amendment to title 4, United States Code, amending the table of chapters reflecting the addition of a new chapter 6 entitled “Moratorium on Certain Taxes”.

Section 3. No expansion of tax authority

This section provides that nothing in the Act shall be construed to expand the duty of any person to collect or pay taxes beyond that which existed immediately before the date of enactment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in *italic* and existing law in which no change is proposed is shown in roman):

TITLE 4, UNITED STATES CODE

Chap.		Sec.
1.	The Flag	1
	* * * * *	
6.	<i>Moratorium on Certain Taxes</i>	151
	* * * * *	

CHAPTER 6—MORATORIUM ON CERTAIN TAXES

Sec.

151. *Moratorium.*

152. *Advisory commission on electronic commerce.*

153. *Legislative recommendations.*

154. *Expedited consideration of legislative recommendations*

155. *Definitions.*

§ 151. Moratorium

(a) *MORATORIUM.*—For a period of 3 years following the date of the enactment of this chapter, neither any State, nor any political subdivision thereof, shall impose, assess, collect, or attempt to collect—

- (1) taxes on Internet access;
- (2) bit taxes; or
- (3) multiple or discriminatory taxes on electronic commerce.

(b) *EXCEPTION TO MORATORIUM.*—(1) Subject to paragraph (2), the moratorium in subsection (a)(1) shall not apply to the following taxes (as applicable), as in effect on the date of the enactment of this chapter, on Internet access:

(A) *STATE OF CONNECTICUT.*—Section 12-407(2)(i)(A) of the General Statutes of Connecticut.

(B) *STATE OF WISCONSIN.*—Section 77.52(2)(a)5 of the Wisconsin Statutes (1995-96).

(C) *STATE OF IOWA.*—Section 422.43(1) of the Code of Iowa (1997).

(D) *STATE OF NORTH DAKOTA.*—North Dakota Century Code 57-39.2 and 57-34.

(E) *STATE OF SOUTH DAKOTA.*—South Dakota Codified Law Annotated 10-45-5.

(F) *STATE OF NEW MEXICO.*—New Mexico Statutes Annotated 7-9-3.

(G) *STATE OF TENNESSEE.*—Tennessee Code Annotated 67-6-221, 67-6-102(23)(iii), and 67-6-702(g).

(H) *STATE OF OHIO.*—Chapter 5739 of the Ohio Revised Code.

(2)(A) Paragraph (1) shall apply with respect to a tax referred to in such paragraph only if the referenced State enacts, during the 1-year period beginning on the date of the enactment of this chapter, a law to expressly affirm that such tax is imposed on Internet access.

(B) A State that satisfies the requirement specified in subparagraph (A) shall be deemed to have satisfied such requirement immediately after the enactment of this chapter, except that such State may not impute penalties or interest on any tax accrued during the period beginning on the date of the enactment of this Act and ending on the date such State satisfies such requirement.

(c) *APPLICATION OF MORATORIUM.*—Subsection (a) shall not apply with respect to the provision of Internet access that is offered for sale as part of a package of services that includes services other than Internet access, unless the service provider separately states that portion of the billing that applies to such services on the user's bill.

§ 152. Advisory Commission on Electronic Commerce

(a) *ESTABLISHMENT OF COMMISSION.*—There is established a temporary commission to be known as the Advisory Commission on Electronic Commerce (in this chapter referred to as the "Commission"). The Commission shall—

(1) be composed of 31 members appointed in accordance with subsection (b), including the chairperson who shall be selected by the members of the Commission from among individuals specified in subsection (b); and

(2) conduct its business in accordance with the provisions of this chapter.

(b) *MEMBERSHIP.*—

(1) *IN GENERAL.*—The Commissioners shall serve for the life of the Commission. The membership of the Commission shall be as follows:

(A) Three representatives from the Federal Government comprised of the Attorney General, the Secretary of Commerce, and the Secretary of the Treasury, or their respective representatives.

(B) Fourteen representatives from State, local, and county governments comprised of 2 representatives each from the National Governors' Association, the National Conference of State Legislatures, the Council of State Governments, the National Association of Counties, the National League of Cities, and the United States Conferences of Mayors; and 1 representative each from the International City/County Managers Association and the American Legislative Exchange Council.

(C) Fourteen representatives of taxpayers and business—

(i) 7 of whom shall be appointed jointly by the Speaker of the House of Representatives and the majority leader of the Senate, of whom 3 shall be individuals employed by or affiliated with persons engaged in providing Internet access or communications or transactions that use the Internet, 3 shall be individuals employed by or affiliated with persons engaged in electronic commerce (including at least 1 who is employed by or affiliated with a person also engaged in mail order commerce), and 1 shall be an individual employed by or affiliated with a person engaged in software publishing; and

(ii) 7 of whom shall be appointed jointly by the minority leader of the House of Representatives and the minority leader of the Senate, of whom 3 shall be individuals employed by or affiliated with persons engaged in providing Internet access or communications or transactions that use the Internet, 3 shall be individuals employed by or affiliated with persons engaged in electronic commerce (including at least 1 who is employed by or affiliated with a person also engaged in mail order commerce), and 1 shall be an individual employed by or affiliated with a person engaged in software publishing.

(2) *APPOINTMENTS.*—Appointments to the Commission shall be made not later than 45 days after the date of enactment of this chapter. The chairperson shall be selected not later than 60 days after the date of the enactment of this chapter.

(c) *ACCEPTANCE OF GIFTS AND GRANTS.*—The Commission may accept, use, and dispose of gifts or grants of services or property, both real and personal, for purposes of aiding or facilitating the work of the Commission. Gifts or grants not used at the expiration of the Commission shall be returned to the donor or grantor.

(d) *OTHER RESOURCES.*—The Commission shall have reasonable access to materials, resources, data, and other information from the Department of Justice, the Department of Commerce, and the Department of the Treasury. The Commission shall also have reason-

able access to use the facilities of the Department of Justice, the Department of Commerce, and the Department of the Treasury for purposes of conducting meetings.

(e) *SUNSET.*—The existence of the Commission shall terminate—

(1) when the last of the committees of jurisdiction referred to in section 154 concludes consideration of the legislation proposed under section 153; or

(2) 3 years after the date of the enactment of this chapter; whichever occurs first.

(f) *RULES OF THE COMMISSION.*—

(1) Sixteen members of the Commission shall constitute a quorum for conducting the business of the Commission.

(2) Any meetings held by the Commission shall be duly noticed at least 14 days in advance and shall be open to the public.

(3) The Commission may adopt other rules as needed.

(g) *DUTIES OF THE COMMISSION.*—The duties of the Commission, to be carried out in consultation with the National Tax Association Communications and Electronic Commerce Tax Project, and other interested persons, may include—

(1) conducting a thorough study of State and local taxation of transactions using the Internet and Internet access;

(2) examining the collection and administration of consumption taxes on remote commerce in other countries and the United States, and the impact of such collection on the global economy;

(3) examining the advantages and disadvantages of authorizing States and local governments to require remote sellers to collect and remit sales and use taxes;

(4) proposing a uniform system of definitions of remote and electronic commerce that may be subject to sales and use tax within each State;

(5) examining model State legislation relating to taxation of transactions using the Internet and Internet access, including uniform terminology, definitions of the transactions, services, and other activities that may be subject to State and local taxation, procedural structures and mechanisms applicable to such taxation, and a mechanism for the resolution of disputes between States regarding matters involving multiple taxation;

(6) examining a simplified system for administration and collection of sales and use tax for remote commerce, that incorporates all manner of making consumer payments, that would provide for a single statewide sales or use tax rate (which rate may be zero), and would establish a method of distributing to political subdivisions within each State their proportionate share of such taxes, including an examination of collection of sales or use tax by small volume remote sellers only in the State of origin;

(7) examining ways to simplify the interstate administration of sales and use tax on remote commerce, including a review of the need for a single or uniform tax registration, single or uniform tax returns, simplified remittance requirements, and simplified administrative procedures;

(8) *examining the need for an independent third party collection system that would utilize the Internet to further simplify sales and use tax administration and collection;*

(9) *reviewing the efforts of States to collect sales and use taxes owed on purchases from remote sellers, as well as review the appropriateness of increased activities by States to collect sales and use taxes directly from customers of remote sellers;*

(10) *examining the level of contacts sufficient to permit a State to impose a sales or use tax on remote commerce that would subject a remote seller to collection obligations imposed by the State, including—*

(A) the definition of a level of contacts below which a State may not impose collection obligations on a remote seller;

(B) whether or not such obligations are applied in a non-discriminatory manner with respect to nonremote transactions; and

(C) the impact of such obligation on small business remote sellers;

(11) *examining making permanent the temporary moratorium described in section 151 with respect to Internet access as well as such other taxes that the Commission deems appropriate;*

(12) *examining ways to simplify State and local taxes imposed on the provision of telecommunications services;*

(13) *requiring the Commission to hold a public hearing to provide an opportunity for representatives of the general public, taxpayer groups, consumer groups, State and local government officials, and tax-supported institutions to testify; and*

(14) *examining other issues that the Commission determines to be relevant.*

(h) **FEDERAL ADVISORY COMMITTEE ACT.**—*The Federal Advisory Committee Act shall not apply with respect to the Commission.*

§ 153. Legislative recommendations

(a) **TRANSMISSION OF PROPOSED LEGISLATION.**—*Not later than 2 years after the date of the enactment of this chapter, the Commission shall transmit to the President and the Congress proposed legislation reflecting any findings concerning the matters described in such section.*

(b) **CONTENTS OF PROPOSED LEGISLATION.**—*The proposed legislation submitted under subsection (a) by the Commission shall have been agreed to by at least 19 members of the Commission and may—*

(1) define with particularity the level of contacts between a State and remote seller that the Commission considers sufficient to permit a State to impose collection obligations on the remote seller and the level of contacts which is not sufficient to impose collection obligations on remote sellers;

(2) provide that if, and only if, a State has adopted a single sales and use tax rate for remote commerce and established a method of distributing to its political subdivisions their proportionate share of such taxes, and adopted simplified procedures for the administration of its sales and use taxes, including uniform registration, tax returns, remittance requirements, and fil-

ing procedures, then such State should be authorized to impose on remote sellers a duty to collect sales or use tax on remote commerce;

(3) provide that, effective upon the expiration of a 4-year period beginning on the date of the enactment of such legislation, a State that does not have in effect a single sales and use tax rate and simplified administrative procedures shall be deemed to have in effect a sales and use tax rate on remote commerce equal to zero, until such time as such State does adopt a single sales and use tax rate and simplified administrative procedures;

(4) include uniform definitions of categories of property, goods, services, or information subject to, or exempt from, sales and use taxes;

(5) make permanent the temporary moratorium described in section 151 with respect to Internet access, as well as such other taxes (including those described in section 151) that the Commission deems appropriate;

(6) provide a mechanism for the resolution of disputes between States regarding matters involving multiple taxation; and

(7) include other provisions that the Commission deems necessary.

(c) **RECOMMENDATIONS OF THE PRESIDENT.**—Not later than 45 days after the receipt of the Commission’s legislative proposals, the President shall review such proposals and submit to the Congress such policy recommendations as the President deems necessary or expedient.

§ 154. Expedited consideration of legislative recommendations

(a) Not later than 90 legislative days after the transmission to the Congress by the Commission of the proposed legislation described in section 153, such legislation shall be considered by the respective committees of jurisdiction within the House of Representatives and the Senate, and, if reported, shall be referred to the proper calendar on the floor of each House for final action.

(b) For purposes of this section, the 90-day period shall be computed by excluding—

(1) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die; and

(2) any Saturday and Sunday, not excluded under paragraph (1), when either House is not in session.

§ 155. Definitions

For the purposes of this chapter:

(1) **BIT TAX.**—The term “bit tax” means any tax on electronic commerce expressly imposed on or measured by the volume of digital information transmitted electronically, or the volume of digital information per unit of time transmitted electronically, but does not include taxes imposed on the provision of telecommunications services.

(2) *COMPUTER SERVER.*—The term “computer server” means a computer that functions as a centralized provider of information and services to multiple recipients.

(3) *DISCRIMINATORY TAX.*—The term “discriminatory tax” means—

(A) any tax imposed by a State or political subdivision thereof on electronic commerce that—

(i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;

(ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period;

(iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means; or

(iv) establishes a classification of Internet access provider for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means; or

(B) any tax imposed by a State or political subdivision thereof, if—

(i) the mere use of a computer server by a remote seller to create or maintain a site on the Internet is considered a factor in determining a remote seller’s tax collection obligation; or

(ii) the display of a remote seller’s information or content on the computer server of a provider of Internet access, or the processing of orders through the computer server of a provider of Internet access, is considered a factor in determining whether the provider of Internet access is deemed to be the agent of the remote seller for tax collection purposes.

(4) *ELECTRONIC COMMERCE.*—The term “electronic commerce” means any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information, whether or not for consideration, and includes the provision of Internet access.

(5) *INFORMATION SERVICES.*—The term “information services” has the meaning given such term in section 3(20) of the Communications Act of 1934 as amended from time to time.

(6) *INTERNET.*—The term “Internet” means the combination of computer facilities and electromagnetic transmission media, and related equipment and software, comprising the interconnected worldwide network of computer networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocol, to transmit information.

(7) *INTERNET ACCESS.*—The term “Internet access” means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. Such term does not include telecommunications services.

(8) *MULTIPLE TAX.*—The term “multiple tax” means—

(A) any tax that is imposed by one State or political subdivision thereof on the same or essentially the same electronic commerce that is also subject to another tax imposed by another State or political subdivision thereof (whether or not at the same rate or on the same basis), without a credit (for example, a resale exemption certificate) for taxes paid in other jurisdictions (The term “multiple tax” shall not include a sales or use tax imposed by a State and 1 or more political subdivisions thereof pursuant to a law referred to in section 151(b)(1) on the same electronic commerce or a tax on persons engaged in electronic commerce which also may have been subject to a sales or use tax thereon. For purposes of this subparagraph, the term “sales or use tax” means a tax that is imposed on or incident to the sale, purchase, storage, consumption, distribution, or other use of tangible personal property or services as may be defined by laws imposing such tax and which is measured by the amount of the sales price or other charge for such property or service); or

(B) any tax on Internet access if the State or political subdivision thereof classifies such Internet access as telecommunications or communications services under State law and such State or political subdivision thereof has also imposed a tax on the purchase or use of the underlying telecommunications services that are used to provide such Internet access without allowing a credit for other taxes paid, a sale for resale exemption, or other mechanism for eliminating duplicate taxation.

(9) *REMOTE COMMERCE.*—The term “remote commerce” means the sale, lease, license, offer, or delivery of property, goods, services, or information by a seller in 1 State to a purchaser in another State.

(10) *REMOTE SELLER.*—The term “remote seller” means a person who sells, leases, licenses, offers, or delivers property, goods, services, or information from one State to a purchaser in another State.

(11) *STATE.*—The term “State” means any of the several States, the District of Columbia, or any territory or possession of the United States.

(12) *TAX.*—The term “tax” means any obligation to pay or to collect and remit any levy, fee, or charge imposed by any governmental entity solely for the purpose of generating revenues for governmental purposes and not—

(A) in return for a specific privilege, service, or benefit conferred on a person or entity;

(B) to support public regulatory commissions; or

(C) to support special purpose telecommunications service programs.

Such term does not include any franchise fees or similar fees imposed by a State or local franchising authority, referred to in section 622 or 653 of the Communications Act of 1934, as amended from time to time.

(13) *TELECOMMUNICATIONS SERVICES.—The term “telecommunications services” has the meaning given such term in section 3(46) of the Communications Act of 1934, as amended from time to time.*

